



**UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD**

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January 10, 2003

Ms. Lisa Ferrante  
PO box 266  
El Prado, NM 87529

RE: Taos Health Systems, Inc.  
d/b/a Holy Cross Hospital  
Case 28-RD-882

Dear Ms. Ferrante:

The Region has carefully investigated and considered your petition filed under Section 9(c) of the National Labor Relations Act.

*Decision to Dismiss:* Based on that investigation, I have concluded that further proceedings are not warranted, and I am dismissing your petition because of allegations in related unfair labor practice proceedings that challenge the circumstances surrounding the petition, and because the potential remedies for the alleged unfair labor practices preclude a question concerning representation. More specifically, I am dismissing your petition for the following reasons:

*Petition and Bargaining History:* Your petition seeks an election to decertify the National Union of Hospital and Health Care Employees District 1199NM, American Federation of State, County and Municipal Employees, AFL-CIO (Union), as the bargaining representative of certain employees of Taos Health Systems, Inc. d/b/a Holy Cross Hospital (Employer). Those employees are in a bargaining unit, commonly referred to as the Nurses Unit, which is defined as follows:

All registered nurses and licensed practical nurses assigned to nursing classifications at the Employer in Taos, New Mexico; excluding Director of Nursing, operating room supervisors, emergency room supervisors, day supervisors, evening supervisors, night supervisors, intensive care unit supervisor, secretaries, technicians, technologists, office clericals, nurses' aides, all other employees, guards, watchmen and supervisors as defined by the Act.

On June 15, 1977, the Professional Performance Association (PPA), a branch of the Union, was certified as the collective bargaining representative of the Nurses Unit. In addition to the Nurses Unit, on May 5, 1982, the Professional Performance Association Affiliates (PPAA), another branch of the Union, was certified as the exclusive representative of another bargaining unit at the Employer, composed of non-nursing employees, which I shall refer to as the Technicians Unit. That unit is described as follows:

All O.R. Technicians, C.S.R. Technicians, Stock Technicians, Nurses Aides, Unit Secretaries, Business Office employees, Laundry Technicians, Maintenance employees, Kitchen employees, Housekeeping employees, X- Ray Technicians, E.M.T.'s, Respiratory Therapy employees, Social Workers, Lab Technicians, Physical Therapy employees, and Medical Records employees employed by the Employer in Taos, New Mexico; excluding all administrative secretaries, relief and temporary employees, professional employees, guards, watchmen, and supervisors as defined in the Act.

While the Nurses and Technicians Units were certified separately and are considered separate units, the Union and the Employer have historically negotiated a single contract covering both units. The most recent collective-bargaining agreement expired on May 31, 2002.

On September 26, 2002, you, who work as an employee in the Nurse Unit, filed your decertification petition based on a showing of interest dated in August and September 2002. The Region initially conducted an administrative investigation of your petition and on October 1, 2002, concluded that your petition should be held in abeyance because certain unfair labor practice charges filed against the Employer by the Union were pending.

*The Employer's Related Unfair Labor Practices:* On November 20, 2002, an Order Further Consolidating Cases, Third Consolidated Complaint and Notice of Hearing (Consolidated Complaint) issued in Cases 28-CA-16818, 28-CA-17220, 28-CA-17307, 28-CA-17677, 28-CA-17680, 28-CA-17689, 28-CA-17877, 28-CA-17994-1, 28-CA- 17994-2, 28-CA-17994-3, and 28-CA-18132. The Consolidated Complaint was amended at the ongoing hearing on the unfair labor practices. The Consolidated Complaint, as amended, alleges, among other matters, that the Employer violated Section 8(a)(1) and (5) of the Act by prematurely declaring impasse in the ongoing successor contract negotiations for a new agreement covering both the Nurses and Technicians Unit, unilaterally changing terms of conditions and of employment of employees in both units, and by refusing to provide, or failing to timely furnish, necessary and relevant requested information for negotiating the successor agreement; violated Section 8(a)(1) of the Act by causing the arrest of the Union Director, Eleanor Chavez, and Melissa Montoya, who was the former President of the PPPA representing the Technicians Unit and who at the time was working as an organizer for the Union; and violated Section 8(a)(1) and (3) by disciplining and discharging Montoya.

*Notice to Show Cause and Responses:* On December 13, 2002, the Region issued a Notice to Show Cause in Case 28-RD-882, requesting that the parties show cause why the decertification petition you filed should not be dismissed in light of the unfair labor practices describe above. While neither the Union nor you responded to the Notice to Show Cause, the

Employer filed its response on December 18, 2002. The Employer, citing *Williams Enterprises, Inc. v. NLRB*, 956 F.2d 1226 (DC Cir. 1992), contends that it cannot be established that a causal connection exists between the Employer's violation of the Act and the Union's loss of majority support to justify a dismissal of your petition. The Employer also asserts that "several months passed" between the alleged unlawful implementation of the Employer's final offer affecting the Nurses Unit and the petition, and that this alleged unfair labor practice, on its own, is not enough to justify the dismissal of the petition.

*Legal Analysis and Determination:* In cases involving unfair labor practices other than a general refusal to recognize and bargain, the Board considers several factors to determine whether there is a causal relationship between the unremedied unfair labor practices and the subsequent employee expression of disaffection with the incumbent union so as to justify dismissal of any decertification action. These factors include: (1) the length of time involved between the unfair labor practices and the employee expression of disaffection; (2) the nature of the illegal acts, including the possibility of their detrimental or lasting effect on employees; (3) any possible tendency to cause employee disaffection from the union; and (4) the effect of the unlawful conduct on employee morale, organizational activities, and membership in the union. *Master Slack Corp.*, 271 NLRB 78, 84 (1984); *Williams Enterprises*, 312 NLRB 937, 939 (1993).

Applying these factors to the Employer's unfair labor practice and your decertification petition, I find that there exists a significant causal relationship between the Employer's alleged unfair labor practices and your decertification petition to justify its dismissal. I reach this conclusion based on a number of factors.

With regard to the first *Master Slack* factor, on June 7, 2002, the Employer declared impasse, and shortly thereafter implemented portions of its final offer with respect to wages and benefits affecting both the Nurses and Technicians Units, including changes in salaries, working hours, absenteeism, and insurance provisions. As noted above the Employer's impasse declaration and implementation of portions of its final offer are alleged in the Consolidated Complaint, as amended, to be violations of Section 8(a)(1) and (5) of the Act and are the subject of the ongoing unfair labor practice hearing. The Employer contends that because these alleged violations occurred four months before the petition was filed on September 26, 2002, that no nexus can be shown between the unfair labor practices and the petition. This contention is in conflict with the Board's holding in *Williams Enterprises, Inc.*, 312 NLRB 937, 940 (1993), where the Board found that a causal relationship existed between an unfair labor practice and decertification petition even though the unfair labor practice occurred four months prior to the decertification petition. Despite the time lag, the Board held that the nature of the unfair labor practice, a statement to employees that the employer intended to operate its plant as nonunion, significantly enhanced the probability that it would have lasting effects on employees. *Id.* In sum, with respect to the first factor in the *Master Slack* analysis, I find that the continued implementation of these changes, which are still in place, enhance the probability that such changes had a lasting effect on employees up through and including the time period of the filing of your petition.

Turning to the second and third *Master Slack* factors, involving the nature of the Employer's illegal acts and their tendency to have a lasting effect on employees and cause employee disaffection from the Union, I find that the Board's holding in *Vincent Industrial Plastics Inc.*, 328 NLRB 300 (1999), is instructive. In *Vincent Industrial Plastics* the employer unilaterally changed its attendance policy and other terms of employment, interrogated an employee, disciplined a union steward, and terminated the union president. Analyzing the second and third *Master Slack* factors, the Board held that "the unilateral changes as well as the disciplining of the union steward, and the termination of the union's president constitute serious and flagrant unfair labor practices which would be likely to have a long lasting effect on the bargaining unit and to discourage employees from supporting the Union." *Id.* at 302.

I conclude that the Employer's illegal actions are of such a nature as to have an even more lasting effect on employees. The Employer implemented significant changes in terms and conditions of employment, including changes in salaries, working hours, and insurance provisions, of those in the Nurses Unit. The Board has held that such "unilateral implementation of significant changes in terms and conditions of employment during negotiations has the tendency to undermine the employees' confidence in the effectiveness of their selected collective-bargaining representative." *Vincent Industrial Plastics, supra*. In addition, the Employer terminated the president of the PPAA, refused to timely provide relevant and necessary information to the Union for the purposes of grievance processing and contract negotiations, and caused Union representatives to be arrested at the Employer's facility. I conclude that such actions would likely have a long lasting effect on the Nurses Unit and discourage employees from supporting the Union. *Vincent Industrials Plastics, supra*.

In analyzing the second and third factors, I reject the Employer's assertion that the majority of the alleged unfair labor practices affect only employees in the Technicians Unit and are insufficient to affect the employees in the Nurses Unit. While there are two separate units, both units work in a single facility. Moreover, the Employer and the Union negotiate a single contract for both units, and members of both units participate in such negotiations. Therefore, issues relevant to one unit also affect the other unit, particularly with respect to common contract provisions and the unfair labor practices relating to the contract negotiations.

I also reject the Employer's contention that the holding of the DC Circuit Court in *Williams Enterprises, Inc. v. NLRB*, 956 F.2d 1226 (DC Cir. 1992), is controlling and should cause a different result. In *Williams Enterprises*, the Court remanded the issue of whether a causal nexus existed between the employer's unfair labor practice and the union's loss of majority support, claiming that the Board had "failed to consider factors similar to those used in its previous decisions" such as *Olson Bodies, Inc.*, 206 NLRB 449 (1973); *Guerdon Indus., Inc.*, 218 NLRB 658 (1975); and *Master Slack Corp.* 271 NLRB 78 (1984). *Id.* at 1236. The Court did not discuss any burden of proof, but instead mandated the Board to apply the factors it had set forth in its previous decisions. On remand, the Board applied the factors set forth in *Master Slack Corp.* and found that a causal relationship existed between the employer's unfair labor practice and the decertification petition submitted to the employer

four months later. *Williams Enterprises, Inc.* 312 NLRB 937, 940 (1993); *enf'd.* 50 F.3d 1280 (1995).

Turning to the final *Master Slack* factor relating to the tendency of the Employer's alleged unfair labor practices to have an effect on employee morale, organizational activities, and membership in the Union, I find that the illegal acts are of such a nature to have such an effect. I find it reasonable to infer that the Employer's unilateral changes in terms and conditions of employment in the Nurses Unit in June 2002, its termination of Montoya on June 7, 2002, and its causing the arrest of Union representatives on August 15, 2002, would have a significant impact on the morale and support for the Union of employees in the Nurses Unit, and such impact was manifested by employees in the unit signing the decertification petition in August through September 2002. See, *Vincent Industrial Plastics, Inc.*, 328 NLRB at 302.

In sum, I find that a causal relationship existed between the Employer's unfair labor practices and the decertification petition filed on September 26, 2002. I conclude that these unfair labor practices challenge the legitimacy of employees' disaffection with the Union as evidenced by the decertification petition. I further conclude that potential remedies for the alleged unfair labor practice violations, which would include an order requiring the Employer to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Nurses Unit, preclude the raising of a question concerning representation. I am, therefore, dismissing your petition.

In the event that the Employer's alleged unfair labor practices, discussed above which are the basis for my dismissing your petition, are ultimately found to be without merit, you may apply to have your petition reinstated after their final disposition. In order to assure notification to you of the disposition of the unfair labor practice proceeding, the Region will make you a party in interest in the unfair labor practice proceeding, with an interest limited solely to receipt of a copy of the order or other document that operates to finally dispose of the proceeding. See *NLRB Casehandling Manual (Part One) Unfair Labor Practice Proceedings*, Sec. 11733.2(b); *Brannon Sand & Gravel*, 308 NLRB 922 (1992).

*Your Right to File a Request for Review:* The National Labor Relations Board Rules and Regulations permit you to obtain a review of this action by filing a request for review with the Executive Secretary of the National Labor Relations Board. If you wish to file a request for review, your attention is directed to the following:

*Appeal Due Date:* The request for review (eight copies) must be received by the Executive Secretary of the Board in Washington, D.C., by the close of business on January 24, 2003.

*Extension of Time to File Request for Review:* Upon good cause shown, however, the Board may grant special permission for a longer period within which to file. The request for extension of time should be submitted to the Executive Secretary of the Board in Washington, D.C., and a copy of any such request for extension of time should be submitted to the Regional Director, and to each of the other parties to this proceeding.

*Request for Review Contents:* The request for review must contain a complete statement setting forth the facts and reasons upon which it is based.

*Service of Appeal:* The request for review and any request for extension of time for filing should be sent to the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570. A copy of such request for review must be served on the Regional Director and each of the other parties to the proceeding. This request for review must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding, and the copy must be served in the same or faster manner as that utilized in filing the request with the Board. When filing with the Board is accomplished by personal service, the other parties shall be promptly notified of such action by telephone, followed by service of a copy by mail.

Sincerely,

/s/ Michael J. Karlson  
Michael J. Karlson  
Acting Regional Director

347-6020-5000  
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MJK/inr

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